

IN THE MATTER OF: DOUG HYMBAUGH; Ringgold County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2007-SW-16 NO. 2007-AQ-27
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I. SUMMARY

Any questions regarding this Order should be directed to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Admin. Code (IAC) 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Doug Hymbaugh**

III. STATEMENT OF FACTS

1. Doug Hymbaugh operates a construction business in Mount Ayr, Iowa. Doug Hymbaugh routinely generates construction and demolition (C & D) wastes in the normal course of business. Construction and demolition wastes are trade wastes arising from a construction business.

2. On November 2, 2006, the Department received a complaint alleging the illegal disposal of C & D wastes in a ravine on a property owned by Doug Hymbaugh. On November 17, 2006, the Department investigated the complaint and documented the illegal open dumping of C & D wastes on property owned by Doug Hymbaugh at 1007 North West Street, Mount Ayr. Photographs were taken.

3. On November 29, 2006, the Department issued a notice of violation to Doug Hymbaugh. The notice included information regarding the prohibition against illegal dumping of solid waste and the regulations related to asbestos-containing structures. The notice further established a deadline of February 1, 2007 for the removal of all waste at the subject property.

4. Subsequent to the inspection on November 17, 2006, the Department received information indicating that Doug Hymbaugh had illegally open burned the C & D waste at his property. This information was investigated on December 6, 2006. On that date it was documented that the previously observed waste had been illegally burned. Additionally, the Department discovered a significant amount of additional C & D waste had been deposited at Doug Hymbaugh's business property at 205 West South Street, Mount Ayr. Photographs were taken.

5. On January 26, 2007, a Notice of Violation was issued to Doug Hymbaugh. The notice required that all solid wastes from both sites be removed and properly disposed of at a permitted sanitary disposal project by March 1, 2007.

6. On April 27, 2007, the Department inspected the two above-referenced properties and found that the solid waste had been removed. Photographs were taken.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.

2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Doug Hymbaugh**

a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-30 relating to air quality.

4. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exceptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

V. ORDER

The Department orders and Doug Hymbaugh agrees to the following compliance schedule:

1. By January 1, 2007, Doug Hymbaugh shall provide receipts to the Department verifying the lawful disposal of all solid waste removed from the two above-referenced locations; and

2. Doug Hymbaugh shall pay an administrative penalty in the amount of \$2,000 at the rate of \$200 per month beginning January 1, 2008. The final payment shall be due on October 1, 2008. The failure to make a monthly payment in compliance with this schedule shall render the full remaining balance of the penalty immediately due and payable.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Doug Hymbaugh**

- a. Economic Benefit. Doug Hymbaugh has achieved an economic benefit from his illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of solid waste has resulted in cost avoidance. The burning of solid waste typically reduces the volume of the waste by greater than 50%. Based upon these facts and in order to resolve this matter consensually, \$300 is assessed for this factor.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. Open burning of solid waste releases toxic air emissions and can produce run-off that pollutes the surface and ground water of the state. Such open burning may violate ambient air standards. Based on the above considerations, \$700 is assessed for this factor.
- c. Culpability. Doug Hymbaugh is engaged in the construction business. The generation of C & D wastes is a routine part of the operation of this business. Doug Hymbaugh has a duty to be aware of the applicable prohibitions against open burning of solid waste. Based upon these factors and the desire to resolve this matter consensually \$1,000 is assessed for this factor.

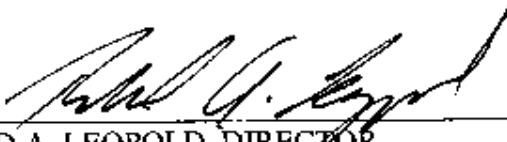
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.133 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Doug Hymbaugh. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE


Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Doug Hymbaugh



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29 day of
November, 2007



DOUG HYMBAUGH

Dated this 29 day of
Nov., 2007

Field Office #4; Jon Tack; VII, C.1.